

IN SENATE OF THE UNITED STATES.

MARCH 3, 1845.

Submitted, and ordered to be printed.

Mr. WOODBRIDGE made the following

REPORT:

[To accompany bill H. R. 545.]

The Committee on Public Lands, to whom was referred the bill (H. R. 545) "for the relief of John Boyd," report :

Where an applicant for the purchase of public land clearly and in good faith designates the tract he desires to purchase in his application to the appropriate officer, and makes that application at the time and place and in the manner prescribed by law, and such land officer fraudulently, wilfully, or by accidental mistake, enters in the books of the office and gives the usual certificate for a different tract, it is presumed that the existing laws confer upon the proper department the authority to correct such mistake, especially if the mistake be disclosed and the proper application be made within a reasonable time. But where the mistake in question is made by the applicant himself or his agent, and through gross negligence, it is not perceived that such individual can have any very strong claim upon the Legislature of the nation, for its aid to help him out of the difficulties his own negligence alone has occasioned. Such seems to be the present case. The only testimony adduced consists in the deposition of Jacob Boyd, the son of the memorialist. The deponent appears to have been requested by his father to ascertain the appropriate description and numbers of the land his father wanted to buy, and made out, he *supposed*, a proper descriptive list of that land; and gave it to his father; that his father procured one Allen Glover to purchase for him the land he desired to secure; and that the purchase was made from the descriptive list so furnished by the department. In a subsequent part of the same deposition, the witness testifies that he did not, when requested by John Boyd to obtain the numbers of the land he wanted, even examine the land described, &c.

That the time of Congress should be consumed in inquiring into and correcting mistakes of this character, it is believed, is neither wise, expedient, nor safe. It is respectfully recommended, that the said House bill be indefinitely postponed.

HOUSE OF REPRESENTATIVES, JANUARY 28, 1845:

Mr. HOUSTON made the following report:

The Committee on Public Lands, to whom was referred the petition of John Boyd, report :

That the petitioner asks to be allowed to surrender to the United States the titles that have issued for the east half of the southeast quarter of section 36, and the west half of the southeast quarter of section 36, township 18, range 2 west, which were purchased by mistake at the land office at Demopolis, Alabama, in the year 1834, and to receive the amount of the purchase money paid into the land office therefor, or scrip to the same amount, to be applied to the purchase of other lands.

It appears from the testimony of Jacob Boyd, who is the son of the petitioner, that in the year 1834 he was requested by the petitioner to take the correct numbers, according to the Government surveys, of certain lands designated, adjoining the lands on which petitioner then lived, in Sumter county, Alabama; that witness accordingly made out the proper numbers and description of the lands designated by the petitioner, and these numbers were placed in the hands of one Allen Glover, who undertook to act as the agent of the petitioner to buy his lands at the land sales at Demopolis in that year. That by a mistake on the part of said Glover in bidding off the lands, or in the land officers in making the entries thereof, the petitioner some time afterwards found that, instead of the lands he desired to purchase, the titles were issued for the tracts above described, which are not those designed to have been purchased, adjoining the land on which the petitioner lived, nor are they of any value or use to him whatever.

The material fact to be ascertained, in order to entitle a party to relief in cases of this kind, is, that a mistake has, in good faith, been made in the entry of the land. It is generally difficult to establish that a mistake has in fact been made in the entry of lands by a disinterested witness, because the purchaser usually takes the numbers of the land he desires to purchase for himself. Whenever the fact can be established by competent evidence, the committee believe that relief ought to be granted. In this case, Jacob Boyd testifies that the lands for which the titles were issued are not those the petitioner intended to buy, or those he (the witness) took the numbers of, and delivered to Glover, to govern his purchases for petitioner. Whether the mistake occurred with Glover, as the agent of the petitioner, or with the land officers, your committee do not consider very material; a mistake has been made, to the prejudice of the petitioner, without any fault on his part.

Your committee therefore report a bill to authorize him, on surrendering to the United States the title granted for the lands so entered by mistake, under such rules as the Secretary of the Treasury may prescribe, to receive a certificate for the amount of the purchase money paid therefor, which shall be receivable for any lands subject to private entry.

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled :

The petition of John Boyd, of Sumter county, in the State of Alabama, respectfully represents :

That your petitioner, being desirous to purchase a tract of land for settlement and cultivation, made a selection of a place in the country acquired by the treaty of 1830 with the Choctaws, in Sumter county ; and not being familiar with the surveys by the United States, required his son, Jacob Boyd, to ascertain the numbers of the land he had selected, and with these numbers your petitioner applied to one Allen Glover to purchase the land for him at the public sales at Demopolis, in the year 1834. The lands were bid off by Mr. Glover, and your petitioner paid the purchase money, and his patents issued in the name of Allen Glover ; and your petitioner has received his conveyance or relinquishment of title. In examining the patents received by your petitioner, and which issued in the name of Allen Glover, as aforesaid, your petitioner finds he has the patents for the east half of the southeast quarter of section 36, and the west half of the southeast quarter of section 36, township 18, range 2 west, in Sumter county. These lands were not selected by your petitioner, nor did he desire to purchase them ; but, if bid off at all by the agent of your petitioner, it was by mistake, as they did not adjoin the tract selected by and purchased for your petitioner, nor are they of any value or use to him whatever, but on the contrary are remote from his settlement, and he has never in any manner interfered with them. Your petitioner, therefore, respectfully prays the passage of a law authorizing him to surrender up the patents thus erroneously issued, and to release, in such form as may be prescribed, all title thereto, and to receive back the purchase money, or be allowed to apply the amount paid in the entry or purchase of other public lands. And, as in duty bound, &c.

JOHN BOYD.

STATE OF ALABAMA, MOBILE COUNTY :

Before me, John A. Cuthbert, judge of the county court for the county of Mobile, and State of Alabama, personally came and appeared Jacob Boyd, now of the city of Mobile, who, being duly sworn according to law, deposes and says : That prior to the sales of the public lands held at Demopolis, Alabama, in the latter part of the year 1834, his father, John Boyd, now of Sumter county, desired to make a settlement upon the public lands in the tract of country which now forms Sumter county, and selected his place of residence, and certain lands adjoining, with a view to a permanent location.

This affiant further says, that, at the request of the said John Boyd, he undertook to obtain from the surveys the numbers and description of the land the said John Boyd had selected, and made out, as he supposed, a descriptive list of the land which the said John Boyd desired to purchase for his settlement, and furnished the same to him.

The said John Boyd procured one Allen Glover to purchase for him the land he desired to secure, and the purchase was made from the descrip-

tive list furnished by this affiant as aforesaid; and the patents for the land bid off by the said Glover for John Boyd were subsequently issued in Glover's name, from the fact that he was requested to bid off the land for Boyd. This affiant further says, that, from a mistake, the said Glover bid off the east half of the southeast quarter of section 36, in township 18, of range 2 west, in Sumter county, at \$2 05 per acre; also, the west half of the southeast quarter of section 36, township 18, range 2 west, at \$2 30 per acre, and the purchase money has in fact been paid by John Boyd, and the said Glover relinquished to him the lands described. This affiant further says, that, when the said John Boyd came to examine the lands described, he found the same did not adjoin the lands he had selected; that he never intended or desired to purchase them; and this affiant knows that the purchase was made wholly in mistake, from the fact that he did not, when requested by John Boyd to obtain the numbers of the land he wanted, even examine the land described above, or furnish their numbers; and from the further fact, that the said lands are valueless, and would have been of no use whatever to the said John Boyd, and they did not adjoin the tract actually purchased by him.

JACOB BOYD:

Subscribed and sworn to before me, this 2d of December, 1844.

JOHN A. CUTHBERT,

Judge County Court, Mobile County.